

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/08/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.18903 of 1998

S.Selvaraj .. Petitioner

-Vs-

1.Assistant Director
Khadi and Village Industries
Nagercoil
2.Regional Deputy Director
Khadi and Village Industries
Madurai
3.Chief Executive Officer
Khadi and Village Industries
Chennai 600 108.
4.The Secretary to Government
Khadi and Village Industries
Chennai 600 108. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records relating to the proceedings in O.M.No.55949/E3/(3)/97 on the file of the fourth respondent resulting in his order dated 11.9.1997 dismissing the petitioner's application for review and confirming the orders of the respondents 1, 2, 3 and 4 dated 17.5.91, 2 .8.91, 14.11.94 and 17.3.95 respectively and quashing the same and directing the respondents 1 to 4 herein to reinstate the petitioner into service confirming on him all the benefits and privileges including pay with increments, promotion etc., which he would have been entitled to but for his suspension and eventual dismissal from service.

!For Petitioner : Mr.M.Chidambaram

^For Respondents : Mr.S.B.Diwakaran for RR1 to 3

:ORDER

Invoking the writ jurisdiction of this Court, the petitioner has brought forth this writ petition seeking to quash the order of the fourth respondent dated 11.9.1997 by way of issuance of a writ of certiorarified mandamus.

2. Admittedly, the petitioner was appointed as Watchman on 10.10.1998 at Marapadi Village, Kanyakumari District, and then, he was transferred to the Godown at Mylaudy. While he was working so, there was a theft on

18.7.1990. The matter was brought to the notice of the police. A case was registered and taken on file by the Judicial Magistrate's Court, Nagercoil, in C.C.No.41 of 1991, wherein this petitioner was arrayed as one of the accused. Pending the criminal proceedings, a departmental enquiry was initiated against the petitioner by the first respondent Disciplinary Authority, and pending enquiry, he was kept under suspension. After the enquiry was over, the first respondent by an order dated 17.5.1991 found the charge proved against him and removed him from service. Aggrieved, the petitioner preferred an appeal before the second respondent, the Regional Deputy Director, Khadi and Village Industries, Madurai, and by an order dated 2.8.1991, the order of the first respondent was affirmed. Against the said order, he preferred an appeal before the third respondent, wherein the orders of the authorities below were confirmed on 14.11.1994. Not satisfied, the petitioner preferred an appeal before the fourth respondent namely the Secretary to Government, Khadi and Village Industries, Madras, and by an order dated 17.3.1995, the appeal petition was dismissed. Subsequently, he filed two review applications. The first one was dismissed on 17.3.1995, and the second one was dismissed on 11.9.1997. Under the stated circumstances, the petitioner invoked the writ jurisdiction of this Court seeking a writ of certiorarified mandamus to quash the order of the fourth respondent made on 11.9.1997 along with a direction for reinstatement.

3. The learned Counsel appearing for the petitioner would submit that the appeal by the petitioner was dismissed by the second respondent on 2.8.1991; but, he was acquitted in the criminal proceedings only on 18.9.1994; that both the first and the second respondents had no occasion to consider that he was acquitted of the charge of theft levelled against him in the Calendar Case as referred to above, and subsequently, he filed appeals before the third and fourth respondents. The learned Counsel would add that the fourth respondent while passing the order on 17.3.1995, has not considered the evidence adduced by the department, but has sustained the orders of the authorities below; that in such circumstances, there arose a necessity for filing the review applications; and that the review petitions have not been considered properly, but have been dismissed by the authority. Added further the learned Counsel that while disposing of the review application, the fourth respondent has not considered the evidence adduced both oral and documentary, but has rejected the same, and hence, the order of the fourth respondent has got to be set aside by this Court.

4. This Court heard the learned Counsel for the respondents 1 to 3 on the above contentions.

5. After careful consideration of the rival submissions, this Court is of the considered view that the writ petition requires a dismissal in the hands of this Court.

6. It is not in dispute that the petitioner was suspended, following an incident of theft, and an enquiry was conducted. It is true that he was dismissed from service, and the appeals preferred by him before the respondents 2, 3 and 4 were dismissed. At this juncture, it is pertinent to point out that what are all canvassed before this Court is only to quash the order of the fourth respondent passed in his review application namely the second review application, on 11.9.1997. It remains to be stated that after the passing of the order by the fourth respondent on 17.3.1995, the petitioner has filed one review application, and it was also dismissed, and thus, the

second review application by the petitioner was dismissed by the fourth respondent on 11.9.1997. Now, what is challenged before this Court is only the order of the fourth respondent dismissing the second review application on 11.9.1997.

7. The only contention put forth by the petitioner's side before this Court is that the fourth respondent has not investigated into the evidence both oral and documentary that were adduced before the lower authority. It is well settled position of law that the review is not intended for re-canvassing of the evidence already adduced by the parties before the proceedings, but only to consider the defects what were apparent on the face of the record. Hence, the contention of the petitioner's side does not stand the scrutiny of law. That apart, the petitioner has not challenged the orders passed by any one of the authorities below regarding termination. This Court is unable to notice any merit in this writ petition, and it has got to be necessarily dismissed.

8. In the result, this writ petition is, accordingly, dismissed leaving the parties to bear their costs.

Index : yes

Internet: yes

To:

1.Assistant Director

Khadi and Village Industries

Nagercoil

2.Regional Deputy Director

Khadi and Village Industries

Madurai

3.Chief Executive Officer

Khadi and Village Industries

Chennai 600 108.

4.The Secretary to Government

Khadi and Village Industries

Chennai 600 108.

nsv/

□